IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

FRIDAY, THE 16TH JUNE 2006 / 26TH JYAISHTA, 1928

FAO.No. 76 of 2006()

IA.671/2005 of DISTRICT COURT, MANJERI

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APPELLANT/PETITIONER:

SELIN SUNNY, W/O. SUNNY JOSE,
CHEKKONNAYIL HOUSE, PULPATTA AMSOM, PRESENTLY
RESIDING AT KARAPPARAMBU HOUSE, IRRIVETTY P.O.,
ELAYOOR, ARIKKODE (VIA) MALAPPURAM.

BY ADV. SRI.K.S.MADHUSOODANAN
SRI.T.V.JAYAKUMAR NAMBOODIRI

RESPONDENTS: RESPONDENTS:

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1. DR. LATHIKA,
CIVIL SURGEON, DISTRICT HOSPITAL, MANJERI,
NOW WORKING AT DISTRICT HOSPITAL, KANNUR.

2. MEDICAL SUPERINTENDENT,
DISTRICT HOSPITAL, MANJERI.

3. STATE OF KERALA TO BE REP. BY
DISTRICT COLLECTOR, MALAPPURAM.

GOVERNMENT PLEADER SRI.ALOSIOUS THOMAS

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 16/06/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

'C.R'

K.HEMA, J.

F.A.0.NO. 76 OF 2006

Dated this the 16th day of June, 2006

JUDGMENT

Appellant filed a suit for damages. The amount of damages claimed is Rs.2,00,000/- with interest at the rate of 12% per annum till realization. After trial, the suit was dismissed by the Subordinate Court on entering a finding on issue No.1. Against the dismissal of the suit, an appeal was filed before the District Court, along with an application as I.A.No.671 of 2005 to exempt appellant from paying court fee.

2. The appellate court ordered to return the appeal for presentation before the proper court, holding that the court has no pecuniary jurisdiction to entertain the appeal, since valuation exceeds Rs.2,00,000/-. The lower appellate court referred to Section 52(3) of the Court Fee and Suits Valuation Act ('the Act', for short) to pass the above order which is under challenge in this appeal.

3. Learned counsel appearing for appellant strongly argued that lower appellate court went wrong in holding that the valuation exceeds to Rs.2,00,000/- in this case. A perusal of the suit would

show that valuation for the purpose of the suit is Rs.2,00,000/-, which is the amount of compensation claimed in the suit. A reading of Section 52 of the Act shows that the fee payable in an appeal shall be the same as the fee that would be payable in the court of first instance on the subject matter of the appeal. As per Explanation-(1), whether the appeal is against the refusal of a relief or against the grant of the relief, the fee payable in the appeal shall be the same as the fee that would be payable on the relief in the court of first instance.

4. The fee which was payable on the relief sought for in the suit in the court of first instance in this case is Rs.2,00,000/-. The relief in the suit being refused by the trial court, as per Explanation-(1) to Section 52 of the Act, the fee payable in the appeal against such refusal shall be the same as that would be payable on the relief in the court of first instance. Therefore, the fee in the appeal payable will only be on Rs.2,00,000/-, which is the same as the fee payable in the court of first instance. The valuation for the purpose of entertaining the appeal would therefore be the same as that on the suit. Therefore, the court below has erred in holding that the valuation exceeds Rs.2,00,000/-.

5. But it appears that the court below was taking into account

the interest which would have accrued on the amount claimed in the suit. The court therefore applied Explanation-(3) to Section 52 of the Act and held that the court has no jurisdiction to entertain the appeal, since the valuation exceeds Rs.2,00,000/-. The court below has made reference to Explanation-(3) to Section 52, in ordering return of the appeal for presentation before the proper court.

6. But a reading of the relevant provision contained in Section 52 of the Act would show that the court has misapplied Explanation-(3) to Section 52 to the facts of this case.

7. Explanation-(3) to Section 52 of the Act lays down that in cases where the claims which include the award of interest subsequent to the institution of the suit, the interest accrued during pendency of the suit till the date of decree, shall be deemed to be part of the subject matter of appeal, except where such interest is relinquished. Thus, it is only in cases where interest has accrued during the pendency of the suit till the date of decree, that Explanation (3) would apply. On the facts of this case and on the nature of suit, it cannot be said that interest would accrue during pendency of the suit. It is only after passing of the decree that interest may accrue in this case and hence Explanation (3) to Section 52 of the Act would not apply to this case.

8. That apart, it is clear from Explanation (3) to Section 52 of the Act that the interest accrued from date of institution of suit till date of decree cannot be deemed to be part of the subject matter of appeal, if such interest is relinquished. The question of relinquishment of interest arises only if interest accrues and not otherwise. So, it is only in cases where interest accrues after institution of suit and during pendency of suit till passing of decree and such interest is not relinquished that such interest also can be reckoned, for the purpose of valuation treating such interest also subject matter of appeal. If interest has not accrued during pendency of suit, the question of relinquishment does not arise. Therefore, this is an added reason to hold that Explanation (3) to Section 52 of the Act does not apply to an appeal filed against dismissal of a suit for damages in which interest has not accrued during pendency of suit. It is also to be noted that the court below has not passed a speaking order on this issue.

9. The order under challenge is therefore, liable to be set aside and I do so. The lower court is directed to take on file the appeal and dispose of the same in accordance with law, in the light of the observations made in this judgment. It is made clear that since the order under challenge is set aside, the appeal ought to be

treated as one filed as on the date on which it is actually filed before the lower appellate court.

This appeal is allowed.

K.HEMA, JUDGE

vgs.

K.HEMA, J.

F.A.O.NO.76 OF 2006

J U D G M E N T

16.06.2006